

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 The Parties**

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Safe Products for Californians LLC (“SPFC”) and Sakara Life, Inc. (“Sakara Life”) with SPFC and Sakara Life collectively referred to as the “Parties.” SPFC is a limited liability California company with its principal place of business within the State of California, County of Santa Clara, who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. SPFC alleges, and, for purposes of this settlement only, Sakara Life does not dispute, that Sakara Life employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

SPFC alleges that Sakara Life has manufactured, imported, sold and/or distributed for sale in California products containing cadmium and/or lead and lead compounds, and that it does so without providing the health hazard warning that SPFC alleges is required by Proposition 65. Cadmium and lead and lead compounds are listed pursuant to Proposition 65 as chemicals known to the state of California to cause reproductive toxicity at the levels alleged by SPFC to be present in the products. As further referenced in Section 1.5 hereof, Sakara Life does not admit that the levels of cadmium, lead and/or lead compounds are in excess of the applicable Proposition 65 Safe Harbor levels, or otherwise that it has violated Proposition 65, and Sakara Life has agreed to this Settlement Agreement for the sole purpose of expeditious resolution of this matter and without any admission of liability whatsoever.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement (referred to herein as the “Covered Products”) are identified in SPFC’s Notice of Violation as: (i) “Sakara Life Metabolism Super Powder,” UPC# 8-58151-00830-3; (ii) “Sakara Nori Chips,” UPC# 8-58151-00814-3; (iii) “Sakara Energy Super Bar,” UPC# 8-58151-00806-8; (iv) “Sakara Nootropic Chocolates,” UPC# 8-58151-008280-0; (v) all bundles, variations or other SKUs or products (which may be sold under different UPC numbers) which consist of, include or incorporate products made from the same recipe, formulation or specification as the products referenced in (i) – (iv) above; and (vi) all Sakara Life powdered or pill form dietary supplement products, granola-based products, and meal replacement, snack or other bar products, each of which product referenced in (i) – (vi) above was or is until such date as is 1 year from the Effective Date, manufactured, imported, distributed, sold and/or offered for sale by Sakara Life and/or its customers in the state of California.

#### **1.4 Notice of Violation**

On or about July 16, 2021, SPFC served Sakara Life, and certain requisite public enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that Sakara Life violated Proposition 65 when it failed to warn its customers and consumers in California that the Covered Products expose users to cadmium and/or lead and lead compounds. To the best of the Parties’ knowledge, no public enforcer has either commenced investigative activities with respect to Sakara Life and/or the Covered Products, and/or intends to or is prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission**

Sakara Life denies the material, factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that it has manufactured, imported, sold and/or distributed for sale in California, including the Covered Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Sakara Life of any fact, finding, and issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Sakara Life of any fact,

finding, conclusion, issue of law or violation of law, such being specifically denied by Sakara Life. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean one year from the date on which this document has been signed by all Parties.

## **2. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

### **2.1 Product Removal**

As of the Effective Date, Sakara Life shall be permanently enjoined from manufacturing for sale in the State of California, “Distributing into the State of California,” or directly selling in the State of California, any Covered Products manufactured after the Effective Date which expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day unless it meets the warning requirements under section 2.3.

**2.1.1** As used in this Settlement Agreement, the term “Distributing into the State of California” shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor Sakara Life knows or has reason to know will sell the Covered Products in California.

**2.1.2** For purposes of this Settlement Agreement, the “Daily Lead Exposure Level” shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of lead exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

**2.1.3** For purposes of this Settlement Agreement, the “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be calculated using the following formula: micrograms of cadmium per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of cadmium exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

## **2.2 Reformulated Covered Products**

Reformulated Covered Products are Covered Products manufactured after the Effective date for which the “Daily Lead Exposure Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” is no more than 4.1 micrograms of cadmium per day.

## **2.3 Clear and Reasonable Warnings**

For any Covered Products manufactured after the Effective Date that do not qualify as Reformulated Covered Products and are directly sold or offered for sale in California by Sakara Life after the Effective Date, Sakara Life shall only sell or offer said non-reformulated Covered Products for sale in California when accompanied with one of the following warnings (or such other warnings as are permitted or required by applicable California law from time to time):

### **OPTION 1:**

**WARNING:** Consuming this product can expose you to [chemicals including] [lead] [and] [cadmium] which is [are] known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

OR:

### **OPTION 2:**

**WARNING:** [Cancer and] Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)”

Sakara Life shall use the phrase “cancer and” in the warning if Sakara Life has reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead, or if Sakara Life has reason to believe that another Proposition 65 chemical is present which may require a cancer warning.

Subject to applicable California law from time to time,

- a. the warning provided pursuant to Section 2.3 shall be prominently affixed to or printed on the Covered Product’s packaging or label with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.
- b. If the warning is provided on the label, it must be set off from other surrounding information and enclosed in a box.
- c. In addition, for any Covered Product sold over the internet where a California delivery address is indicated, the warning shall be provided either by including the warning on the product display page, by otherwise prominently displaying the warning to the purchaser during the checkout process prior to completing the purchase, or by any other means authorized under Section 25607.1 of Title 27 of the California Code of Regulations.
- d. In the event Sakara Life provides the warning pursuant to OPTION 2, above, the entire warning must be in a type size no smaller than the largest size used for other consumer information on the product, and in no case shall the warning appear in a type size smaller than 6-point type. For all warnings, the word “**WARNING**” shall be in all capital letters in bold print. Any additional statements in the warning shall comply with Title 27, California Code of Regulations, Section 25601(e).

Notwithstanding the foregoing and for absolute clarity, the Parties acknowledge and agree that if Sakara Life has met the obligations under Title 27 of the California Code of Regulations (as amended from time to time), it shall be deemed to have satisfied its obligations hereunder.

## **2.4 Conforming Covered Products**

**2.4.1** A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” is no more than 4.1 micrograms of cadmium per day as determined by the quality control methodology described in Section 2.4. Beginning within one year of the Effective Date, Sakara Life shall arrange for lead and cadmium testing of the Covered Products at least once a year for a minimum of five consecutive years by arranging for testing of five randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user, which Sakara Life intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or “Distributing into the State of California.” For absolute clarity, such 5 randomly selected samples may, at Sakara Life’s option, either be pulled from multiple batches of the same production run or from multiple batches of multiple production runs in the same testing year. If tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered Product during each of five consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if during or after the five-year testing period, Sakara Life changes ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered Products, Sakara Life shall test that Covered Product annually for lead and/or cadmium at least four (4) consecutive years after such change is made.

**2.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or “Daily Cadmium Exposure Level,” the highest lead and/or cadmium detection result of the five (5) randomly selected samples of the Covered Products will be controlling.

**2.4.3** All testing pursuant to this Consent Judgment shall be performed by an independent third party laboratory certified by the California Environmental Laboratory Accreditation Program or an independent third-party laboratory that is registered with the United States Food & Drug Administration.

**2.4.4** Nothing in this Consent Judgment shall limit Sakara Life's ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

**2.4.5** Within thirty (30) days of SPFC's written request, Sakara Life shall deliver lab reports on the Conforming Covered Products obtained pursuant to Section 2.4 to SPFC. Sakara Life shall retain all test results and documentation for a period of five years from the date of each test.

### **3. MONETARY PAYMENTS**

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code section 25249.7(b), Sakara Life shall pay civil penalties in the amount of \$20,781.60. The penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty paid to SPFC. SPFC's counsel shall be responsible for remitting Sakara Life's penalty payment under this Settlement Agreement to OEHHA. Within fifteen (15) days of this Agreement being signed by both Parties, Sakara Life shall issue a check payable to "Safe Products for Californians, LLC" in the amount of \$5,195.40, and a check payable to OEHHA in the amount of \$15,586.20. These penalty payments shall be delivered to the address listed in Section 3.3 below.

#### **3.2 Reimbursement of Attorneys' Fees and Costs**

The Parties acknowledge that SPFC and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Sakara Life expressed a desire to resolve SPFC's fees and costs. The Parties then negotiated a resolution of the compensation due to SPFC and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5. For all work performed through the mutual execution of this agreement, Sakara Life shall reimburse SPFC and their counsel \$19,065. Sakara Life's

payment shall be delivered to the address in Section 3.3 in the form of checks payable to “Moore Law Firm, P.C” and shall be due as follows: \$9,065.00 within fifteen (15) days of this Agreement being signed by both Parties, and \$10,000.00 due January 3, 2022. The reimbursement shall cover all fees and costs incurred by SPFC investigating, bringing this matter to Sakara Life’s attention and negotiating a settlement of the matter in the public interest.

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to the following address:

Safe Products for Californians, LLC  
c/o Moore Law Firm, P.C.  
300 South First Street, Suite 342  
San Jose, CA 95113

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 SPFC’s Release of Proposition 65 Claims**

This Settlement Agreement is a full, final and binding resolution between SPFC, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, and Sakara Life, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Sakara Life directly or indirectly distributes or sells Covered Products, including, but not limited to, Urban Outfitters, Inc., downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, and upstream manufacturers, distributors or suppliers which produces, manufactures, distributes or sells the Covered Products, or any component parts thereof or ingredients therein, to Sakara Life (collectively, “Releasees”), from all claims for any violation of Proposition 65 through the Effective Date that were or could have been asserted by SPFC relating to the Covered Products. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to cadmium and/or lead and lead compounds from or relating to, the Covered Products, as set forth in the Notice and otherwise. The Parties further understand and



agree that this Section 4.1 release shall not extend upstream to any entities that did not manufacture or distribute Products or component parts thereof sold by Sakara Life.

#### **4.2 SPFC's Individual Releases of Claims**

SPFC, in its capacity only and on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees and *not* in its representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of SPFC of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to cadmium and/or lead and lead compounds in the Covered Products manufactured, imported, distributed, or sold by Sakara Life prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Sakara Life. Nothing in this section affects SPFC's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Sakara Life's Covered Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3, SPFC, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that it may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the allegations made in the Notice.

#### **4.3 Sakara Life's Release of SPFC**

Sakara Life, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against SPFC and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by SPFC and their attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Covered Products.

#### **4.4 Waiver of Civil Code Section 1542**

With respect to the foregoing waivers and releases in this Settlement Agreement, SPFC hereby specifically waives any and all rights and benefits which it now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

#### **6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Covered Products, then Sakara Life shall provide written notice to SPFC of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the

extent that, the Covered Products are so affected. If the Office of Environmental Health Hazard Assessment promulgates one or more regulations governing the provision of Proposition 65 warnings for foods, Sakara Life may comply with such regulations as to the Covered Products without being deemed in breach of this Settlement Agreement. Nothing in this Settlement Agreement shall be interpreted to relieve Sakara Life from any obligation to comply with any pertinent state or federal toxics control law.

## **7. NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Sakara Life:

Deepa Koita  
Attn: Legal Department  
580 Broadway, Suite 210  
New York, NY 10012

For SPFC:

Proposition 65 Coordinator  
Moore Law Firm, P.C.  
300 South First Street, Suite 342  
San Jose, CA 95113

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

## **8. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements addressing compliance with Proposition 65 as to the Covered

Products not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

**9. COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

SPFC agrees to comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f).

**11. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**12. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

Dated: Oct 7, 2021

  
KR Moore (Oct 7, 2021 18:21 PDT)  
\_\_\_\_\_  
Safe Products for Californians, LLC  
By: Randy Moore, Operating Manager

Dated: October 6, 2021

  
\_\_\_\_\_  
Sakara Life, LLC  
By: Deepa Koita, CFO